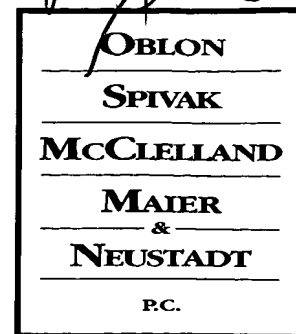




Docket No.: 219843US0

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313



ATTORNEYS AT LAW

JAMES J. KELLY, Ph.D.
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RE: Application Serial No.: 10/077,745
Applicants: Takayuki KODA, et al.
Filing Date: February 20, 2002
For: ORGANIC NITROGEN-CONTAINING
COMPOSITION AND FERTILIZER COMPRISING
THE SAME
Group Art Unit: 1652
Examiner: C.L. FRONDA

SIR:

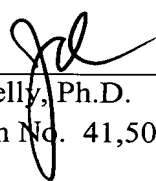
Attached hereto for filing are the following papers:

**Request for Extension of Time (ONE-MONTH); Pre-Appeal
Brief Request For Review; & Notice of Appeal**

Our credit card payment form in the amount of **\$620.00** is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



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DOCKET NO. 19843US0

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
TAKAYUKI KODA, ET AL. : EXAMINER: C.L. FRONDA
SERIAL NO: 10/077,745 :
FILED: FEBRUARY 20, 2002 : GROUP ART UNIT: 1652
FOR: ORGANIC NITROGEN-CONTAINING COMPOSITION AND FERTILIZER
COMPRISING THE SAME

PRE-APPEAL BRIEF REQUEST FOR REVIEW

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Prior to Appeal, Applicants respectfully request review of the rejections set forth in the Office Action October 19, 2005. A Notice of Appeal is submitted herewith. No Amendments are being filed with this request. No more than five (5) pages are provided.

The present invention relates to a fertilizer comprising an organic nitrogen-containing composition comprising fermentation mother liquor obtained by culturing a strain of *Enterobacter agglomerans* having L-glutamic acid-producing ability in a liquid medium the pH of which is adjusted to 5.0 or less, to allow L-glutamic acid to be produced and accumulated, which is accompanied by precipitation of L-glutamic acid, and then separating L-glutamic acid from the medium,

where the fertilizer comprises cells of the a strain of *Enterobacter agglomerans* having L-glutamic acid-producing ability and where the strain is AJ13355 (FERM BP-6614) strain or a derivative thereof obtained by mutagenesis treatment or a recombinant DNA technique.

See Claim 28.

Claims 28-32 have been rejected for allegedly not satisfying the enablement requirement of 35 U.S.C. §112, first paragraph. The Examiner erred in making the rejection because one of ordinary skill in the art could obtain the claimed derivative of strain AJ13355 without undue experimentation.

Recombinant DNA techniques and mutagenesis treatments are described in detail at page 15, lines 24 to page 23, line 6 of the specification. One of ordinary skill in the art can readily obtain a derivative strain of the AJ13355 strain by modifying that strain using the very recombinant DNA techniques and mutagenesis treatments described in the specification. In addition, the derivatives obtained in that manner can be used in the claimed method because they maintain the ability of the parent AJ13355 strain to produce L-glutamic acid at pH 5 or less, as recited in Claim 28. For that reason, those skilled in the art can practice the claimed method without undue experimentation. Accordingly, the claims are enabled and the rejection should be withdrawn.

Claims 28-32 have been rejected for allegedly not satisfying the written description requirement of 35 U.S.C. §112, first paragraph. The Examiner erred in making the rejection because one of ordinary skill in the art would conclude that the inventors were in possession of derivatives of AJ13355 strain obtained from that strain as claimed by a mutagenesis treatment or a recombinant DNA technique.

The present specification provides an explicit description of derivatives of the AJ13355 strain obtained by a mutagenesis treatment or a recombinant DNA technique at page 15, lines 24-29. As discussed above with the respect to enablement, one of ordinary skill in the art could obtain a derivative of strain AJ13355 without undue experimentation based on the information provided in the present specification. In view of those facts, one of ordinary skill in the art would conclude that the inventors were in possession of derivatives of

Application No. 10/077,745
Pre-Appeal Brief Request for Review

AJ13355 strain obtained from that strain as claimed by a mutagenesis treatment or a recombinant DNA technique. For that reason, the written description rejection should be withdrawn.

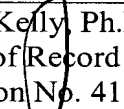
Applicants submit that the present application is in condition for allowance. Early notice to this effect is earnestly solicited.

Respectfully submitted,

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